

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on Priority Mail Rates

Docket No. C2001-2

**DOUGLAS F. CARLSON
ANSWER TO POSTAL SERVICE MOTION TO DISMISS
AND ANSWER TO POSTAL SERVICE MOTION
TO SUSPEND PROCEEDINGS**

February 22, 2001

On January 12, 2001, I filed a document titled "Complaint on Priority Mail Rates." On February 12, 2001, the Postal Service filed its answer and motion to dismiss or, in the alternative, suspend the proceedings ("Answer").¹ On February 20, 2001, the Postal Service filed a supplement to the motion to dismiss the complaint ("Supplemental Motion").

In its opinion and recommended decision in Docket No. R2000-1, the Commission recommended a classification change to charge the one-pound rate, rather than the two-pound rate, for Priority Mail flat-rate envelopes. PRC Op. R2000-1 at 324-25, ¶ 5355. The Postal Service had requested a rate of \$3.45 for one-pound Priority Mail and a rate of \$3.85 for Priority Mail weighing more than one pound but not more than two pounds (the "two-pound rate"). USPS-T-34 at 9. Because the classification change would have increased the average weight of the one-pound and two-pound cells, the Commission recommended higher rates for Priority Mail — \$3.50 for one pound and \$3.95 for two pounds.²

¹ Answer of the United States Postal Service and Motion to Dismiss Or, in the Alternative, to Suspend Proceedings (filed February 12, 2001).

² In its Answer, the Postal Service misstates my complaint. According to the Postal Service, I argued that the Commission should recommend lower rates for one-pound and two-pound Priority Mail "to reflect the revenue effect of retaining the higher flat rate." Answer at 2. I made no

See PRC Op. R2000-1 at 324–25, ¶ 5354. The Commission was explicit in specifying that it was raising the one-pound and two-pound rates to compensate for the classification change; thus, the Commission raised these rates *only because* it also recommended a classification change. See *Id.* Unfortunately, the Governors rejected the classification change and then proceeded to accept (under protest) the higher one-pound and two-pound rates. Decision of the Governors of the United States Postal Service on the Recommended Decisions [sic] of the Postal Rate Commission on Selected Mail Classification Matters, Docket No. R2000-1 at 1–3 (December 4, 2000). Consequently, I alleged in my complaint that the rates for one-pound and two-pound Priority Mail and for flat-rate envelopes are inconsistent with the policies of the Act. Complaint at ¶¶ 14 and 18.

Logically, the rates that the Postal Service implemented cannot be consistent with the policies of the Postal Reorganization Act. Consider this chart, which summarizes the rates at issue:

	COLUMN 1	COLUMN 2	COLUMN 3
Weight/Category	Postal Service Request	Commission Recommendation	Postal Service Implementation
Up to One Pound	\$3.45	\$3.50	\$3.50
Over One Pound, Not More Than Two Pounds	\$3.85	\$3.95	\$3.95
Flat-Rate Envelope	\$3.85	\$3.50	\$3.95

The Commission was so concerned about the fairness of the rates proposed in Column 1 that the Commission recommended the rates in Column 2

such argument. The higher rates presumably were necessary because shifting flat-rate envelopes to the one-pound rate would have increased the average weight in both the one-pound cell and the two-pound cell. Since flat-rate envelopes in fact remain in the two-pound category, the average weight of each cell has not been increased, so the rationale for raising the one-pound and two-pound rates no longer exists. For this reason, the higher rates are inappropriate.

instead. The Postal Service implemented the rates in Column 3. Each rate in Column 3 is higher than the corresponding rate in Column 1.

The rates in Column 1 caused the Commission so much concern about the possibility that consumers would be overcharged that the Commission recommended the rates in Column 2 instead. See, e.g., PRC Op. R2000-1 at 324, ¶ 5354. In declining to recommend the set of rates proposed in Column 1, the Commission undoubtedly did not believe that the set of rates in Column 1 would be consistent with the Act. *Id.*

The rates that the Postal Service implemented (Column 3) are *higher* in every respect than the set of rates that caused the Commission serious concern about overcharging in the first place.³ Notably, the rate for flat-rate envelopes — the rate that initiated the Commission’s concern — is now higher than the rate that alarmed the Commission about the prospect that consumers using flat-rate envelopes would be overcharged. Therefore, given that the rates in Column 1 were too high and otherwise were not consistent with the Act, surely the even-higher rates that the Postal Service implemented are not consistent with the policies of the Act, either. Using FY 1998 volume data, perhaps as many as 911 million Priority Mail pieces are now paying rates that are unjustifiably high. See Docket No. R2000-1, USPS-LR-I-165, Priority Mail Pricing Spreadsheets, worksheet “Input Data,” cell range B120:E153.

Moreover, the Commission was concerned about the risk that consumers would be overcharged if a rate of \$3.85 applied to Priority Mail flat-rate envelopes. The Commission recommended a rate of \$3.50 for flat-rate envelopes, but the Postal Service implemented a rate of \$3.95. Consequently, the Commission should judge all Postal Service arguments supporting dismissal

³ The rates for one-pound and two-pound Priority Mail in column 2 are higher than those in column 1 only because the Commission needed to compensate for shifting flat-rate envelopes into the one-pound cell.

of this complaint against the inescapable fact that, logically, the rates that the Postal Service implemented are inconsistent with the Act.

My complaint asks for two alternative forms of relief. Complaint at ¶ 21. Under the first alternative, the Commission would issue a recommended decision recommending a rate of \$3.45 for Priority Mail weighing up to one pound and \$3.85 for Priority Mail weighing more than one pound but not more than two pounds. *Id.* The Commission would not recommend a classification change, so flat-rate envelopes would continue to be charged the two-pound rate. *Id.* Under the second alternative, the Commission would conduct a hearing on the record, then issue a recommended decision to change DMCS § 223.5 to charge the one-pound rate, rather than the two-pound rate, for Priority Mail flat-rate envelopes. *Id.*

The Postal Service advances several grounds for dismissing my complaint. As I will discuss below, none of these grounds requires the Commission to dismiss my complaint. Moreover, the Postal Service has provided no persuasive reason for the Commission to exercise its discretion to dismiss my complaint. Therefore, the Commission should deny the Postal Service's motion to dismiss.

Applicability of Section 3628

The Postal Service suggests that 39 U.S.C. § 3628 bars my complaint under section 3662. Answer at 10–11. A plain reading of sections 3628 and 3662 reveals that the Postal Service is mistaken.

According to section 3628, an “aggrieved party” who appeared in a rate or classification proceeding before the Commission “may” appeal to the United States Court of Appeals a decision of the Governors to approve, allow under protest, or modify the recommended decision of the Commission. 39 U.S.C. § 3628. Section 3628 grants an important right, and this right is available only to parties who appeared in a rate or classification proceeding.

Section 3662 grants another important right:

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title . . . may lodge a complaint with the Postal Rate Commission[.]

39 U.S.C. § 3662. The Postal Service has not cited any section of the Postal Reorganization Act, or any other statute, that denies a party a right to pursue a complaint under section 3662 because that person participated in a rate or classification proceeding. Congress provided an unqualified right under section 3662 to “interested parties.” Interested parties may or may not have participated in a rate or classification proceeding. Indeed, if anything, a party who *did* participate in a rate or classification proceeding arguably is more likely to be interested in a rate issue than a party who did not participate in a rate or classification proceeding. In any event, Congress did not exclude rate-case participants from filing complaints under section 3662. The Postal Service’s claims to the contrary have no merit. Indeed, the Postal Service’s view of the limited rights of rate-case participants would not withstand judicial scrutiny under the Equal Protection Clause or the Due Process Clause of the United States Constitution.

The Postal Service also has cited no statute providing that section 3628 is the *only* remedy available to a person who participated in a rate or classification proceeding. A plain reading of the Postal Reorganization Act confirms that sections 3628 and 3662 provide two different types of remedies. Rate-case participants, and only rate-case participants, may seek appellate review pursuant to section 3628. This review may result in direction from an appellate court on proper resolution of the dispute. 39 U.S.C. § 3628. On the other hand, every “interested” party may file a complaint under section 3662. 39 U.S.C. § 3662. The best outcome of a complaint is an opinion and recommended decision back to the Postal Service. No judicial opinion follows from a complaint. In filing this complaint, I have properly elected the section 3662 remedy. Section 3628 did not provide my only remedy.

Rates Versus Classifications

The Postal Service argues that my complaint should be dismissed insofar as it raises classification issues, since section 3662 applies to rate and service complaints. Answer at 10. The Postal Service's reading of section 3662 is not reasonable.

Section 3662 offers a complaint process to resolve rate and service complaints. My complaint is a rate complaint because the Postal Service is charging three *rates* that are not consistent with the Postal Reorganization Act:

1. A rate of \$3.95 for Priority Mail flat-rate envelopes;
2. A rate of \$3.50 for Priority Mail weighing up to one pound;
3. A rate of \$3.95 for Priority Mail weighing more than one pound but not more than two pounds.

The Governors' decision in Docket No. R2000-1 included a classification decision concerning the proper classification for flat-rate envelopes. This decision has led to a *rate* for flat-rate envelopes that is not fair, is not sufficiently aligned with costs, and may have a negative effect on users of the mail. The Postal Service simply cannot reasonably dispute the fact that the *rate* for flat-rate envelopes is 45 cents higher than the rate that the Commission determined to be fair and otherwise consistent with the Postal Reorganization Act. See PRC Op. R2000-1 at 324–25, ¶ 5355. Section 3662 permits rate complaints, and my complaint is a rate complaint concerning the three rates identified above.

The fact that a dispute over the classification for flat-rate envelopes has led to rates that are inconsistent with the Act fails to support the Postal Service's contention that my complaint is not proper under section 3662. Moreover, the Commission may institute a classification proceeding under section 3662 as one method of addressing the rate for flat-rate envelopes, since this rate is

inconsistent with the policies of the Act, and a classification change would be one way to correct the problem. The Postal Service cites no authority to the contrary.

Thus, even though the Postal Service achieved a rate of \$3.95 for flat-rate envelopes by rejecting a classification change that the Commission recommended, the issue is a rate issue under section 3662. The \$3.95 rate for flat-rate envelopes is too high⁴; therefore, it is not consistent with the Act.

Taking the Governors' decision at face value, a principal objection to the classification change for flat-rate envelopes was, according to the Postal Service, the absence of an examination of the proposal on the record. Decision of the Governors of the United States Postal Service on the Recommended Decisions [sic] of the Postal Rate Commission on Selected Mail Classification Matters, Docket No. R2000-1 at 1–3. This complaint proceeding provides a perfect opportunity to remedy this problem if the Commission chooses to conduct a hearing on the classification issue. No statute precludes the Commission from ordering relief by conducting a hearing on the classification issue. This proceeding is not a review of a decision by the Governors to reject a classification change, as the Postal Service contends,⁵ because the Commission would not be reviewing the legality of the Governors' decision in the way that an appellate court would. Rather, the Commission would be examining the classification issue on the record, pursuant to a rate complaint under section 3662, and issuing an opinion and recommended decision.

The Commission's Decision in Docket No. C96-2 Is Not Controlling

The Postal Service suggests that the Commission's decision in Docket No. C96-2 bars my complaint concerning the classification issue. That decision, however, followed from a different set of facts.

⁴ The \$3.95 rate for flat-rate envelopes is too high in two respects. First, the one-pound rate should apply to flat-rate envelopes. Second, even if the two-pound rate should apply to flat-rate envelopes, the two-pound rate should be \$3.85, not \$3.95.

⁵ See Answer at 10–11.

After the Docket No. MC95-1 reclassification case, the Postal Service implemented a “150-piece rule” that restricted eligibility for the five-digit letter rate in the automation category of regular subclass Standard Mail. Order No. 1121 at 1. Several parties joined together to file a complaint alleging that the 150-piece rule constituted a classification change and was inconsistent with the Act. *Id.* at 2. The Commission concluded that the 150-piece rule did not alter the mail classifications that the Commission recommended in Docket No. MC95-1. *Id.* at 10. Therefore, the Commission declined to initiate a mail-classification proceeding to consider the appropriateness of the 150-piece rule as an eligibility standard at that time. *Id.* The Commission noted that the implementation of new classifications was the culmination of “five years of planning and collaboration between the Postal Service and interested mailers,” and the complainants participated in that process. *Id.* The Commission determined that a new mail-classification inquiry would be “premature at best.” *Id.* at 10–11. The Commission dismissed the complaint without prejudice to allow for a possible proceeding in the future after experience with this category of mail could be documented. *Id.* at 11.

Significantly, other parties litigated the 150-piece rule during the reclassification case. *Id.* at 8–9. The Commission even considered and responded to another party’s direct case analyzing the effect of the 150-piece rule. *Id.* at 9. Therefore, the 150-piece rule arguably was litigated in the reclassification case.

In contrast, the rates that the Postal Service implemented for one-pound and two-pound Priority Mail in Docket No. R2000-1 were not litigated in the omnibus rate case to examine the legality of those higher rates along with a rate of \$3.95 for flat-rate envelopes. Therefore, as precedent for the viability of my complaint under section 3662 concerning the one-pound and two-pound rates, the Commission’s order dismissing the complaint in Docket No. C96-2 is inapposite.

While ignoring the significant factual differences between Docket No. C96-2 and my complaint on Priority Mail rates, the Postal Service apparently views Order No. 1121 as controlling precedent for dismissing my alternative form of relief — to establish a classification proceeding to consider the classification for flat-rate envelopes. Answer at 11–13. The Postal Service reads Order No. 1121 as concluding that “petitioners had been afforded a full and fair opportunity to address the subject matter of their complaint in the recently concluded Docket No. MC95-1.” *Id.* at 12. The key difference between the two cases is that in Docket No. MC95-1, other parties *did* litigate the 150-piece rule, and the Commission issued its recommended decision with full knowledge that the Postal Service planned to implement the 150-piece rule. In sharp contrast, in Docket No. R2000-1, no party litigated the classification for flat-rate envelopes to an extent, and in a manner, satisfactory to the Postal Service. See Answer at 11–12.

The Postal Service cannot have it both ways. On the one hand, the Governors strongly objected to an alleged lack of examination of the classification change on the record. Decision of the Governors of the United States Postal Service on the Recommended Decisions [sic] of the Postal Rate Commission on Selected Mail Classification Matters, Docket No. R2000-1 at 2–3. If the Governors are correct, then the current complaint case differs markedly from the Docket No. MC96-2 complaint because some parties in the Docket No. MC95-1 reclassification case litigated the subject matter at issue in the complaint case. In contrast, according to the Governors, I did not litigate this classification issue on the record in the omnibus rate case. Thus, Docket No. C96-2 cannot constitute controlling precedent.

If, on the other hand, I did litigate the classification issue in the omnibus rate case, thus rendering this complaint redundant, then the Governors were mistaken in asserting, as the primary basis for rejecting the classification change, that the classification change was not examined on the record.

Along the same contradictory lines, the Postal Service asserts that to “revisit the issue in a complaint docket would be to encourage and abet the waste of administrative resources.” Answer at 11. The Postal Service’s use of the term “revisit” is curious given that the Postal Service complains that the classification change was not examined on the record in the omnibus rate case — so how would this complaint revisit the matter?

Either way, significant differences exist between the facts of this complaint case and the facts facing the Commission in Docket No. C96-2. Therefore, Order No. 1121 provides, at best, guidance for resolving the Postal Service’s motion to dismiss; it is not, however, controlling.

Finally, another significant difference exists between Docket No. C96-2 and the current complaint. In Docket No. R2000-1, the Commission ruled in my favor in the omnibus rate case. In contrast, complainants in Docket No. C96-2 did not prevail in the initial classification proceeding. See Order No. 1121 at 9. I am attempting to correct an anomalous result that occurred when the Postal Service selectively implemented the Commission’s recommended decision. This result has led to rates for Priority Mail that are inconsistent with the policies of the Act.

Given the unusual circumstances in this case, the Commission may properly exercise its discretion under Rule 86 and conduct a proceeding to examine the classification for flat-rate envelopes. This action would be entirely consistent with the Act, and it would not overturn Commission precedent.

The Postal Service Implemented Rates That The Commission Did Not Intend

As I explained in my complaint, the Commission recommended higher rates for one-pound and two-pound Priority Mail to compensate for recommending a classification change to charge the one-pound rate for Priority Mail flat-rate envelopes. PRC Op. 2000-1 at 324–25, ¶ 5355. By rejecting the classification change but accepting the higher one-pound and two-pound rates,

the Postal Service implemented rates that are not fair and are not sufficiently aligned with costs.

The Postal Service now claims that the rates that the Commission intended are not the only rates that are consistent with the Act. Answer at 14. The Postal Service's position is pure speculation, however, because the Postal Service has not identified other sets of rates that are consistent with the policies of the Act. Moreover, as I explained at 1–3, *supra*, the current rates are *higher* than the rates that the Commission determined would pose an unacceptable risk of consumers being overcharged. Thus, regardless of which of the many possible sets of rates might or might not be consistent with the Act, the rates that the Postal Service implemented — the set of rates relevant to the present analysis — are not consistent with the Act.

The Postal Service also states that it presumes that the Commission, when recommending a set of rates and classifications, was aware that the Postal Service might not approve all of the Commission's recommendations. Answer at 13–14. I do not doubt that the Commission understood that the Postal Service might reject particular recommendations. At the same time, surely the Commission must have expected at least a flicker of good faith on the part of the Postal Service to prevent an undesired, anomalous result that ran contrary to the Commission's clearly articulated goal of protecting consumers. Nowhere in the opinion does the Commission reveal its expectation that the Postal Service would manipulate the opinion and recommended decision to cause *more* harm to consumers than the Commission feared the Postal Service's original proposal would cause.

In Docket No. R2000-1, the Commission expressed concern that customers using flat-rate envelopes would be confused and overcharged if the two-pound rate applied to flat-rate envelopes. See PRC Op. R2000-1 at 322–25. The Commission unmistakably sought to protect consumers. Moreover, the Commission explicitly tied its recommendation for higher one-pound and two-

pound rates to the classification change that it was recommending. *Id.* at 324–25, ¶ 5355.

Regrettably, the Postal Service responded not only by continuing to charge the two-pound rate for flat-rate envelopes but also by accepting rates for one-pound and two-pound Priority Mail and for flat-rate envelopes that are higher than the rates that the Postal Service originally requested. As a result, customers are now worse off than they would have been if the Commission had expressed no concern whatsoever about the rate for flat-rate envelopes. This harm extends beyond customers who use flat-rate envelopes. All customers who send Priority Mail weighing up to two pounds are suffering harm from the rates that the Postal Service implemented.

To summarize, the Postal Service requested a set of rates that caused the Commission to be concerned that consumers would be overcharged. Those rates, therefore, were not consistent with the Act. The Commission recommended a new set of rates to address this problem. The Postal Service has now implemented a set of rates that, in all respects, are *higher* than the rates the Postal Service initially requested that caused the Commission to seek to protect consumers from overcharging. Logically, the set of rates that the Postal Service implemented cannot possibly be consistent with the Act because the rates are higher than the set of rates that initially prompted the Commission to take action to protect consumers from being overcharged. Perhaps as many as 911 million Priority Mail pieces are now paying rates that are unjustifiably high. See Docket No. R2000-1, USPS-LR-I-165, Priority Mail Pricing Spreadsheets, worksheet “Input Data,” cell range B120:E153.

Absence of Evidence or Testimony

The Postal Service complains that I have not proffered any evidence or testimony concerning customer confusion, unfairness, inequity, and negative effects on users of the mail. Answer at 15. Notably, the Postal Service has provided no authority for this attack on my complaint. In reality, Rule 83 specifies

the necessary elements of a complaint, and my complaint provides all the information that Rule 83 requires.⁶ The Postal Service's allegation has no basis in the Commission's Rules of Practice.

Effect of Commission's Further Recommended Decision

On February 9, 2001, the Commission issued an opinion and further recommended decision in Docket No. R2000-1.⁷ This further recommended decision responded to a request from the Postal Service for reconsideration of the Commission's decision in Docket No. R2000-1.⁸

In requesting reconsideration, the Postal Service did not request reconsideration of Priority Mail rates. In its further recommended decision, the Commission acknowledged a \$55 million increase in revenue resulting from the Postal Service's rejection of the classification change for flat-rate envelopes. Further Recommended Decision at 51–52, ¶ 4003. The Postal Service was the first to identify this infusion of revenue, as the \$55 million figure appears in the Governors' decision.⁹ In its further recommended decision, the Commission did not recommend any changes to Priority Mail rates.

The Postal Service seizes on the Commission's adjustment of Priority Mail revenues and the Commission's omission of any changes in Priority Mail rates as an indication that the Commission considers the current rates to be "fair, equitable, supported by substantial evidence, appropriately cost-based, and otherwise compliant with the requirements and policies of the Postal Reorganization Act." Supplemental Motion at 1–2. The Postal Service relies too

⁶ In fact, the Commission already reached the conclusion that the current classification for flat-rate envelopes might have a negative effect on users of the mail. See PRC Op. R2000-1 at 324, ¶ 5354. I have no obligation to prove this contention anew.

⁷ Opinion and Further Recommended Decision (February 9, 2001).

⁸ Memorandum of the United States Postal Service on Reconsideration and Request for Expedition (December 20, 2000).

⁹ Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000-1 at 19 (December 4, 2000).

heavily on speculative implications of the Commission's further recommended decision.

First, the Commission's adjustment of Priority Mail revenues was a mechanical action that simply acknowledged a fact: by not accepting the classification change, the Postal Service would enjoy an additional \$55 million in revenue. This action by the Commission does not constitute a ruling on the legality of the Priority Mail rates.

Second, since the Postal Service did not ask the Commission to reconsider Priority Mail rates, parties could not properly comment on adjustments to Priority Mail rates in the comment period¹⁰ after the Postal Service filed its request for reconsideration. For this reason, I did not file comments. The Postal Service should not be surprised that the Commission did not recommend changes to Priority Mail rates given that no party had an opportunity to comment on this issue.

Third, the Commission issued its further recommended decision after I filed my complaint but before the Postal Service had had an opportunity to respond to my complaint. In addition, the Commission issued its further recommended decision before I had an opportunity to advance legal arguments on the subject matter of the complaint. Given that a complaint proceeding was beginning on the issue of Priority Mail rates, the Commission arguably correctly did not recommend changes in Priority Mail rates before hearing legal arguments on the issues in my complaint and without affording parties an opportunity to comment on possible changes in Priority Mail rates during the reconsideration of Docket No. R2000-1.

Finally, even if the Commission did conclude in issuing its further recommended decision that the existing Priority Mail rates were consistent with the policies of the Act, the Commission issued this decision before hearing legal

¹⁰See Order No. 1301.

arguments on the issues that my complaint raises. Section 3662 allows me an opportunity to persuade the Commission that the existing Priority Mail rates are not consistent with the Act. Therefore, the Commission's further recommended decision does not dispose of issues that parties had not yet litigated when the Commission issued its further recommended decision.

For the reasons explained herein, the Commission should deny the Postal Service's motion to dismiss and grant one of the two alternative forms of relief that I requested in my complaint.

The Commission May Institute A Proceeding Under Section 3623

If, for any reason, the Commission determines that instituting a classification proceeding under section 3662 would be inappropriate, the Commission should institute a classification proceeding under section 3623(b). Section 3623(b) permits the Commission to institute a classification proceeding on its own initiative. 39 U.S.C. § 3623(b). This proceeding would examine the proper classification of flat-rate envelopes on the record, in a manner acceptable to the Postal Service, and correct the shortcomings of the current rates.

Answer to Motion to Suspend Proceedings

If the Commission does not dismiss my complaint, the Postal Service requests that the Commission suspend these proceedings until the "reconsideration process has run its course[.]" Answer at 16. The Postal Service argues that possible changes to the Docket No. R2000-1 revenue requirement and to rates and fees beyond those identified in the further recommended decision "could substantially alter or moot the basis for the Complaint[.]" Answer at 15–16. The Postal Service requests, therefore, that the unspecified "ongoing administrative reconsideration process" be allowed to "run its course." Answer at 16.

At the same time, the Postal Service "will not speculate here regarding what the Governors may do or where their decision may lead." Answer at 15. Essentially, the Postal Service requests that this complaint proceeding be suspended even though the Postal Service does not know which actions the Governors may take, how those actions may or may not affect the likelihood that some issues in this complaint might become moot, or exactly which steps will occur next in this vaguely described "administrative reconsideration process." In an attempt to deny me due process, the Postal Service wants this complaint proceeding suspended now until any other activities that may possibly affect the issues in my complaint have "run their course."

The Commission should decline the Postal Service's invitation. Contrary to possibly interfering with further reconsideration of the decision in Docket No. R2000-1, continuing with this complaint proceeding will allow analysis of the legal issues that my complaint raises. This analysis will assist the Commission in resolving any further reconsideration of its decision in Docket No. R2000-1. The two proceedings likely would complement each other. Depending on the progress of reconsideration of Docket No. R2000-1, perhaps the issues in the complaint proceeding would be merged into the Docket No. R2000-1 reconsideration or even into a case for an experimental classification for presorted Priority Mail that the Postal Service apparently will file shortly. However, since suspending a proceeding raises serious due-process concerns, the Commission should consider suspending this complaint proceeding only at a time when the Commission might be virtually certain that the reconsideration process would cause the issues in my complaint to become moot or that continuing this complaint proceeding would be imprudent. Presently, no identifiable reason exists to justify the conclusion that my complaint should not proceed.

Suspension of the proceedings would, at minimum, delay relief to me and other consumers who send Priority Mail. In Docket No. C99-4, the Commission

denied a Postal Service motion to suspend the complaint proceedings in order to litigate the issue in the then-recently filed omnibus rate case.¹¹ Order No. 1281. The Commission explained that suspension of the proceedings would “compromise the complaint process and might result in an injustice to the Complainant.” *Id.* at 3. Similar dangers in this proceeding should compel the Commission to deny the Postal Service’s motion to suspend the proceedings.

Respectfully submitted,

Dated: February 22, 2001



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

February 22, 2001
Berkeley, California

¹¹In the Docket No. C99-4 complaint proceeding, the complaint had proceeded significantly farther by the time the Postal Service filed its motion than my complaint on Priority Mail rates has.